IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8244 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAKASH CHIMANLAL JAISHWAL

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 08/03/2000

ORAL JUDGEMENT

#. The Commissioner of Police, Vadodara City, Vadodara, passed an order on August 14, 1999 in exercise of powers under section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner under the provisions of the PASA Act.

#. The detaining authority took into consideration three prohibition cases registered against the petitioner vide CR Nos. 154/97, 348/98 and 10/98. It is stated that the petitioner was acquitted. The detaining authority took into consideration the statements of three anonymous witnesses in respect of incidents dated July 25, 1999, July 6, 1999 and June 3, 1999. The detaining authority branded the petitioner as "bootlegger" and after considering the possibility of resorting to less drastic remedies, observed that the detention under the PASA Act is the only efficacious remedy that can be resorted to immediately prevent the petitioner from pursuing his activities which are detrimental to public health and public order.

#. The petitioner challenges the order of detention on various counts. However, Mr. Patel, learned advocate for the petitioner has restricted his arguments to the fact that there is gross non application of mind on the part of the detaining authority. He submitted that the detaining authority has taken into consideration the prohibition registered vide CR No. 10/98. The detaining authority has also supplied papers relating to that offence and if that is perused, it indicates that the accused therein was not the present petitioner but one Raju Natvarlal Chaudhari and therefore, there is non application of mind. Another fold of his argument is that the accused in that case has been acquitted admittedly as can be seen from the grounds of detention in para 1 and therefore, the authority should have taken into consideration this case.

#. Mr. K.T. Dave, learned AGP has opposed this petition.

#. On perusal of the papers, there appears substance in the argument advanced by Mr. Patel about non application of mind on the part of the detaining authority. The detaining authority has considered prohibition CR No. 10/98 wherein, the name of the accused is Raju Natvarlal Chaudhari of Bakrawadi, near Patel Saw Mill, Vadodara whereas the present petitioner's name is Prakash Chimanlal Jaiswal, resident of village Tarsali, near Gram Panchayat office, district Baroda. In the entire FIR, there is no reference to the present petitioner. The detaining authority has, therefore, wrongly considered this offence against the petitioner while passing the order of detention. This is non application of mind while passing the order of detention and therefore, the order stands vitiated. Since this ground in itself is

sufficient for vitiating the order of detention, the other ground advanced by Mr. Patel are not considered at this stage by this Court nor it is pressed by him. The petitioner therefore deserves to be allowed.

#. This petition is allowed. The order of detention dated August 14, 1999 is hereby quashed and set aside. The detenue - Prakash Chiman Jaiswal is ordered to be set at liberty forthwith, if not required in any other matter. Rule made absolute with no order as to costs.

[A.L. DAVE, J.]

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